

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF TEXAS  
FORT WORTH DIVISION**

CONSENSYS SOFTWARE INC.,

Plaintiff,

v.

GARY GENSLER, Chair of the U.S. Securities  
and Exchange Commission; CAROLINE A.  
CRENSHAW, JAIME LIZÁRRAGA, MARK T.  
UYEDA, and HESTER M. PEIRCE, each a  
Commissioner of the U.S. Securities and  
Exchange Commission; and U.S. SECURITIES  
AND EXCHANGE COMMISSION,

Defendants.

C.A. No.: 4:24-cv-00369-O

**DEFENDANTS' REPLY IN SUPPORT OF  
MOTION TO AMEND SCHEDULING ORDER**

Consensys's Opposition (Dkt. 40) fails to address or dispute the SEC's principal argument—that no urgency, or any other reason, justifies continuing with discovery and summary judgment briefing prior to the Court's resolution of the SEC's pending Motion to Dismiss (Dkt. 37). To the contrary, Consensys now confirms that it is dropping Counts I-III of its Complaint, and it does not claim any urgency regarding Count IV. For these reasons, the Court should grant the SEC's Motion to Amend the Scheduling Order.

In its Opposition, Consensys confirms that it is abandoning Counts I through III of its Complaint. Count IV, the only remaining count, is supported by just a small number of largely

conclusory allegations.<sup>1</sup> It does not require or warrant resolution on the merits on the current schedule. Count IV should be dismissed or transferred to New York, where the SEC has sued Consensys pursuant to its Congressional mandate to enforce the federal securities laws and where the SEC has set forth detailed factual allegations in support of its claims that Consensys's conduct has violated those laws. Moreover, absent a modification of the current schedule, both the parties and Court will be unduly burdened—conducting discovery and briefing the merits of a case that may be dismissed on jurisdictional grounds or transferred. Indeed, Consensys claims no prejudice that would result from staying litigation of the merits of Count IV pending resolution of the Motion to Dismiss, and none exists.<sup>2</sup>

In its Motion to Dismiss, the Commission has set forth several compelling reasons to dismiss Count IV, including governmental immunity and improper use of the Declaratory Judgment Act. Plaintiff maintains that it “will address those points” per the current schedule—in which its opposition is due November 1—three months from today. (Opposition at 8 and n.4.) In the interim, Plaintiff insists that the parties conduct discovery and file summary judgment briefs on the merits of Count IV. However, under these current circumstances—where Consensys has abandoned all but a few of its allegations—this is not the most efficient course, to say the least. The SEC's proposed amended schedule—requiring that the parties complete briefing on the

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<sup>1</sup> See Compl. ¶¶ 15, 43-47, 87-90. Indeed, the vast majority of the Complaint's allegations relate to the now-abandoned Counts I-III: Ethereum, the Ethereum 2.0 investigation, and Consensys's arguments that ETH is not a security (*see, e.g.*, ¶¶ 2-14, 34-41, 50-62, 69-85).

<sup>2</sup> Plaintiff also fails to explain its insistence on June 25 and 27 that it had an “urgent interest” in the prompt resolution of Counts I-III—despite knowing since June 18 that the SEC's ETH 2.0 Investigation had concluded and that, thus, Counts I-III were moot. Indeed, Consensys waited another month (until July 18), after the SEC's repeated inquiries, to inform the SEC that it did not intend to seek summary judgment on those claims.

Motion to Dismiss by September 11—allows for efficient resolution of the significant threshold issues while avoiding potentially unnecessary litigation by both sides.

### CONCLUSION

For these reasons, as well as those set forth in the Motion to Amend, the SEC respectfully requests that the Court grant the SEC's Motion to Amend the Scheduling Order.

Dated: August 1, 2024

/s/ Jason J. Rose

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\* Not admitted in N.D. Tex. *Pro hac vice* motions forthcoming or pending.

**CERTIFICATE OF SERVICE**

I affirm that on August 1, 2024, I caused the foregoing to be electronically filed with the Clerk of the Court for the Northern District of Texas, Fort Worth Division, by using the CM/ECF system which will send a notice of electronic filing to all CM/ECF participants.

/s/ Jason J. Rose  
Jason J. Rose